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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/821,332	03/29/2001	Bernd Hessing	1554	5352

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STRIKER, STRIKER & STENBY
103 East Neck Road
Huntington, NY 11743

EXAMINER

TWEEL JR, JOHN ALEXANDER

ART UNIT	PAPER NUMBER
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2636

DATE MAILED: 07/15/2004

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/821,332

Applicant(s)

HESSING ET AL.

Examiner

John A. Tweel, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9, 10 and 12-16 is/are rejected.
- 7) ☒ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6</u> . | 6) <input type="checkbox"/> Other: _____ |

1. This Office action is in response to the amendment filed 4/29/04. Claims 1-8 have been canceled. Claims 9-16 have been added.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 9, 10, 13, and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by **Myr** [U.S. 6,480,783].

For claim 9, the method of transmitting traffic information about a traffic obstruction on a traffic way with digital coded messages taught by **Myr** uses digital coding performed at the Central Traffic Unit (CTU) which codes 1) the location designating a traffic-relevant point such as N1 or N2 as seen in the drawing package and 2) the section part of the traffic way such as R7 or R8 as seen in Figure 21 that starts at a coded location to an actual location of a client vehicle experiencing the obstruction, said CTU also 3) transmitting the message.

For claim 10, as seen in Figures 21-24 of **Myr**, the traffic-relevant points are intersections of a traffic way.

For claim 13, each section part transmitted in **Myr** includes a position of a section corresponding to the beginning of a traffic obstruction and an end of the traffic obstruction based on the length of each segment in the map database.

For claim 16, each section part transmitted in **Myr** includes a position of a section corresponding to the beginning of a traffic obstruction and an end of the traffic obstruction based on the length of each segment in the map database.

4. Claims 12, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Myr** in view of European standard ENV 12313-1.

For claims 12 and 14, the method taught by **Myr** includes the claimed subject matter as discussed in the rejection of claim 1 above; however, there is no mention of ALERT-C protocol with coding of the section part in Label 15 or Label 2.

The European standard ENV 12313-1 details the alert-C protocol in which traffic messages are formed which is then broadcast between vehicles. This is plain evidence of a common and well-known method to broadcast messages such as those found in **Myr**. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the alert-C protocol using label 2 or Label 15 coding for the purpose of using a common and well known transmitting protocol that is accepted throughout a major part of the world.

For claim 15, each section part transmitted by **Myr** includes a position of a beginning of a traffic obstruction and an end of the traffic obstruction based on the length of each segment in the map database; however, there is no mention of transmitting the section part via Label 2.

The claim is interpreted and rejected for the same reasons and rationale as is mentioned in the rejection of claims 12 and 14 above.

Response to Arguments

Argument 1:

"In the method of Myr it is not necessary to transmit the exact position of a traffic obstacle because the data sampling vehicles broadcast travel times to the central computer, which converts them into statistical data or calculated routes or route sections, which are transmitted to the client vehicles. In fact, Myr does not disclose a method of transmitting the exact position of a traffic obstacle on a travel way or roadway, such as an accident scene or a downed tree, to client vehicles."

Argument 2:

"Myr does not disclose transmitting a coded location from a database of a transmitter unit broadcasting digital from a database of a transmitter unit broadcasting digital traffic messages, which designates a traffic-relevant point, such as an expressway exit or road intersection, which may be near the position of the traffic obstacle and then a 'section part' or distance from the coded location to the actual or true position of the traffic obstacle in a TMC traffic message."

Argument 3:

"It is especially important to remember that the statute (103) requires that the source of the suggestions or hints cannot be the applicants' specification and that the

references and the suggestion must have been apparent at the time the invention was made by the inventor, i.e. at least the application date.”

5. Applicant's arguments filed 4/29/04 have been fully considered but they are not persuasive.

Response to Argument 1:

The independent claim does not disclose a method of transmitting the exact position of a traffic obstacle on a travel way or roadway. As long as the Applicant insists on using the vague term “traffic-relevant point”, the Examiner will continue to use references such as **Myr** that meet the claim language.

Response to Argument 2:

The nodes such as N1 and N2 certainly appear to be locations and the sections connecting them certainly appear to at least function as section “parts”. As this performs the same function as the claims, the above rejection stands.

Response to Argument 3:

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was

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within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

6. Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. The following is a statement of reasons for the indication of allowable subject matter:

No piece of prior art describes a section part in relation to a measure, and wherein the measure is a distance between the coded location on the traffic way and another coded location on the traffic way spaced from the coded location and the section part is described as a percentage of the measure.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kleiner et al [U.S. 5,862,244] compares photographs of cities to compute percentage obstruction.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John A. Tweel, Jr. whose telephone number is 703 308 7826. The examiner can normally be reached on M-F 10-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Hofsass can be reached on 703 305 4717. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JAT
7/10/04

A handwritten signature in black ink, appearing to read 'John Tweel', with a stylized, cursive script.

JOHN TWEEL
PRIMARY EXAMINER